IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

Bail Appl..No. 4276 of 2007()

CRIME NO.193/07 OF KALLABALAM POLICE STATION

PETITIONERS/ACCUSED 1 TO 3:

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1. AYOOB, S/O. IBRAHIM KUNJU,
   PEZHUVILLA VEEDU, VILLAYKKADU, MADAVOOR P.O.,
   PALLICKAL.

2. SHARAFUDDIN,
   PEZHUVILLA VEEDU, VILLAYKKADU MADAVOOR P.O.,
   PALLICKAL.

3. LATHEEFA, W/O. SHARAFUDDIN,
   PEZHUVILLA VEEDU, VILLAYKKADU, MADAVOOR P.O.,
   PALLICKAL.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENTS:

STATE OF KERALA,
REPRESENTING THE S.H.O., KALLABALAM POLICE STATION
THIRUVANANTHAPURAM, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4276 of 2007

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Dated this the 13th day of July, 2007

O R D E R

Application for anticipatory bail. The petitioners are husband, his sister and his brother-in-law. The defacto complainant is the wife. It is alleged that the defacto complainant had secured an order of the competent court permitting her to reside in the house. When the defacto complainant went to the house of the petitioner she is alleged to have been assaulted and beaten with dangerous weapons by the first accused in collusion with the other accused. The defacto complainant/wife suffered a grievous injury, a fracture. Crime has been registered. Investigation is in progress.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. No incident as alleged had at all taken place. In these circumstances direction under Section 438 Cr.P.C. may be issued in favour of the petitioners, prays the counsel.

3. The learned Prosecutor opposes the application. The allegations are grave. Injury suffered is grievous. There are no circumstances justifying the invocation of the powers under Section 438 Cr.P.C. submits the Prosecutor.

4. I find merit in the opposition raised by the learned Prosecutor. I am satisfied that this is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. I find no reason to invoke the equitable discretion under Section 438 Cr.P.C.

5. This application is hence dismissed. Needless to say, if the petitioners surrender before the Investigating Officer or the learned Magistrate having jurisdiction and apply for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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